

Remarks

Claims 1-10, 12-25 and 27 were previously pending, of which claims 1, 5 and 27 have been amended. Reconsideration of presently pending claims 1-10, 12-25 and 27 is respectfully requested in light of the above amendments and the following remarks.

Rejections under 35 U.S.C. § 102

Bryan Reference

Claims 1-3, 5-7 and 27 were rejected under 35 U.S.C. §102(b) as being anticipated by Bryan, et al. (US Patent No. 6,156,067 hereinafter referred to as "Bryan"). As set forth at MPEP §2131, it is well-established that "a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." With respect to claim 1 as herein amended, this rejection is respectfully traversed.

Claim 1, as amended, requires:

a first plate comprising an outer surface for engaging with a first bone and **an inner surface including both a first recessed surface and a concave articulation surface**, the first recessed surface spaced apart from the concave articulation surface;
a second plate for engaging with a second bone, the second plate comprising a second recessed surface;
a convex articulation member positioned entirely between the two plates and in direct and slidable contact with the concave articulation surface; and
a motion-controlling member extending between the first and second recessed surfaces, wherein **the articulation member is** separate from and **stiffer than the motion-controlling member**.

The Bryan reference does not appear to teach several elements of claim 1 as emphasized above. Therefore, it is respectfully submitted that the §102(b) rejection of claim 1 is not supported by the reference, and should be withdrawn. Claims 2-4 depend from and further limit Claim 1 and thus, appear also to be in condition for allowance.

With respect to claim 5 as herein amended, this rejection is also traversed.

Claim 5, as amended, requires:

a first plate comprising an outer surface for engaging with the first vertebral body and **an inner surface including both a first recessed surface and a concave articulation surface**, the first recessed surface adjacent to the concave articulation surface;

a second plate for engaging with the second vertebral body, the second plate comprising a second recessed surface;

an articulation member made from a first material and positioned in direct and articulating engagement with the concave articulation surface and entirely between the two plates; and

an elastic motion-controlling member made from a second material and positioned between the first and second recessed surfaces, the second material being more elastic than the first material.

The Bryan reference does not appear to teach several elements of claim 5 as emphasized above. Therefore, it is respectfully submitted that the §102(b) rejection of claim 5 is not supported by the reference, and should be withdrawn. Claims 6-25 depend from and further limit claim 5 and thus appear to also be in condition for allowance. With respect to claim 5, Examiner noted "that changes have made to claim 5 that were not properly indicated in the amended response filed 10/3/2007." (Office Action, page 3). Applicants were unable to find an improper amendment of claim 5 but are willing to correct any such unintentional oversight.

With respect to claim 27 as herein amended, this rejection is also traversed.

Claim 27 requires:

a first plate for engaging with a first bone comprising a superior surface and an inferior surface, the **superior surface having both a recessed surface portion and a convex articulation surface portion**, the recessed surface portion adjacent to the convex articulation surface portion;

a second plate for engaging with a second bone comprising a superior surface and an inferior surface, the inferior surface having a concave articulation surface portion in direct contact and articulating engagement with the convex articulation surface portion; and

a motion-controlling member, separate from the convex articulation surface portion, positioned between the recessed surface portion and the inferior surface of the second plate.

The Bryan reference does not appear to teach several elements of claim 27 as emphasized above. Therefore, it is respectfully submitted that the §102(b) rejection of claim 27 is not supported by the reference, and should be withdrawn.

Buttner-Janz Reference

Claims 1-3, 5 and 6 were rejected under 35 U.S.C. §102(b) as being anticipated by Buttner-Janz, et al. (US Patent No. 5,401,269 hereinafter referred to as “Buttner-Janz”).

With respect to claim 1 as herein amended, this rejection is respectfully traversed.

Claim 1, as amended, requires:

a first plate comprising an outer surface for engaging with a first bone and **an inner surface including both a first recessed surface and a concave articulation surface**, the first recessed surface spaced apart from the concave articulation surface;

a second plate for engaging with a second bone, the second plate comprising a second recessed surface;

a convex articulation member positioned entirely between the two plates and **in direct and slidable contact with the concave articulation surface**; and

a motion-controlling member extending between the first and second recessed surfaces, wherein the articulation member is separate from and stiffer than the motion-controlling member.

The Buttner-Janz reference does not appear to teach several elements of claim 1 as emphasized above. Therefore, it is respectfully submitted that the §102(b) rejection of claim 1 is not supported by the reference, and should be withdrawn. Claims 2-4 depend from and further limit claim 1, and therefore also appear to be in condition for allowance.

With respect to claim 5 as herein amended, this rejection is also traversed.

Claim 5, as amended, requires:

a first plate comprising an outer surface for engaging with the first vertebral body and **an inner surface including both a first recessed surface and a concave articulation surface**, the first recessed surface adjacent to the concave articulation surface;

a second plate for engaging with the second vertebral body, the second plate comprising a second recessed surface;

an articulation member made from a first material **and positioned in direct and articulating engagement with the concave articulation surface** and entirely between the two plates; and

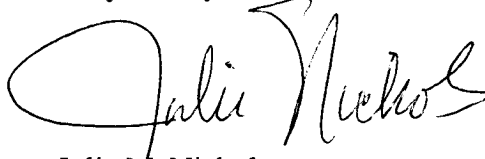
an elastic motion-controlling member made from a second material and positioned between the first and second recessed surfaces, the second material being more elastic than the first material.

The Buttner-Janz reference does not appear to teach several elements of claim 5 as emphasized above. Therefore, it is respectfully submitted that the §102(b) rejection of claim 5 is not supported by the reference, and should be withdrawn. Claims 6-25 depend from and further limit claim 5, and therefore also appear to be in condition for allowance.

Conclusion

An early formal notice of allowance of claims 1-10, 12-25 and 27 is requested. The Examiner is invited to telephone the undersigned if further assistance is necessary. The Commissioner is hereby authorized to charge any fees or credit any overpayments to Deposit Account No. 08-1394.

Respectfully submitted,

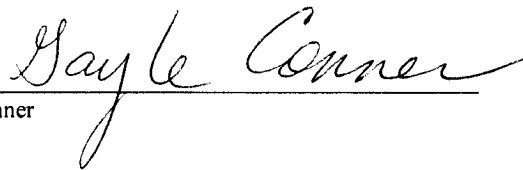


Julie M. Nickols
Registration No. 50,826

Date: March 20, 2008
HAYNES AND BOONE, LLP
901 Main Street, Suite 3100
Dallas, Texas 75202-3789
Telephone: 972-739-8640
Facsimile: 214-200-0853

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Gayle Conner